36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 104.

CREDITORS OF DANIEL B. VONDERSMITH.

[To accompany Bill H. R. No. 356.]

MARCH 19, 1860.

Mr. HICKMAN, from the Committee on the Judiciary, made the following

REPORT.

The Committee on the Judiciary, to whom was referred the memorial of certain creditors of Daniel B. Vondersmith, respectfully report:

That on ebruary 7, 1854, Daniel B. Vondersmith was arrested at Lancaster, in the State of Pennsylvania, upon a charge of forging pension papers, with intent to defraud the United States. He gave bail before the Hon. Henry G. Long, president judge of the State court at Lancaster, in the sum of $2,000 for his appearance at the next term of the district court of the United States for the eastern district of Pennsylvania, to answer the charges to be there preferred against him. The district attorney of the United States deeming the bail inadequate, had him rearrested on February 10, 1854, when he gave bail in a similar manner in the further sum of $5,000. In both the recognizances, together amounting to $7,000, John F. Shroder became the security. Vondersmith fled before the session of the court, and on the first day of the term, February 21, 1854, the recognizance of Shroder was declared to be forfeited. At the time that Shroder became bail he obtained from Vondersmith a confession of judgment in the sum of $7,000, to indemnify him against any loss by reason of his suretyship. This judgment was entered in the office of the prothonotary of the court of common pleas of Lancaster on February 27, 1854, and subsequently, although at what precise date does not appear, nor is it material to know, Shroder assigned this judgment to the United States. Vondersmith returned in the year 1857, was again arrested and put into prison in default of bail. While there his wife died, leaving four children, and some friends were induced to enter bail for him in the sum of $15,000 for his appearance at court to take his trial, which recognizance was fulfilled without delay or forfeiture. His means appeared to have been exhausted, and to prepare the necessary means of defence, as well as to provide support for his family, he gave judgments to several other creditors, amounting, altogether, to about $7,000, which were entered in like manner as Shroder's judgment, at

the respective dates mentioned in the prothonotary's certificate hereto appended. Vondersmith's trial took place at Philadelphia in April, 1859, when he was acquitted upon four indictments, was convicted upon two, and on May 7, 1859, he was sentenced to undergo an imprisonment in the penitentiary for twenty years, which sentence he is now undergoing. The only property owned by him at the time of his conviction seems to have been certain real estate in Lancaster, which was levied upon and sold under an execution issued upon one of the judgments, and the proceeds, amounting to $6,101, have been paid into and are now in court for distribution according to law. No proceedings were taken against Shroder, and he has not paid anything by reason of his suretyship.

By the law of Pennsylvania a judgment is a lien on the debtor's real estate within the county for five years from its date, but the creditor, plaintiff, may, by process of *scire facias* to revive the judgment, extend the original lien for another five years, and so, *toties quoties*, until payment. A judgment index is required to be kept, a reference to which always shows the names of the parties to the judgment. The judgment of Shroder was not renewed within five years, nor has any step been yet taken towards such renewal or extension of lien, and prior to the time of the sale of Vondersmith's property the five years had expired. The district attorney of the United States has, however, made claim upon the proceeds, for payment of the Shroder judgment upon the legal grounds assumed by him, that the United States are not subject to the limitation of lien prescribed by the statute of Pennsylvania. This claim is resisted by the other creditors for reasons hereinafter more fully stated; but as the litigation would probably be protracted, the questions of law being such as would be within the appellate jurisdiction of the Supreme Court of the United States, all parties have forborne action until the application now made shall have been finally disposed of by Congress, and it is under these circumstances that the judgment creditors pray relief by the passage of an act authorizing the claim of the United States to be postponed to the claims of the other judgment creditors.

The memorialists have urged that, even if the United States have the legal right asserted by its officer, there is much merit in their application, and that they are equitably entitled to the relief asked. The government has attained its full object in the conviction and punishment of the criminal, and have not been in any manner prejudiced or subjected to any expense by reason of the non-fulfilment of the original recognizance. They have further argued that the law is not as claimed by the United States, for the following reasons:

Firstly. The lien is statutory, not made by common law, nor by any statute of the United States, but solely by Pennsylvania, and the same law which creates the lien limits its duration.

Secondly. The maxim of *nullum tempus occurrit regi* is inapplicable, inasmuch as the sovereignty to be recognized must be the State sovereignty, the law-making power in the particular case.

Thirdly. The judgment should not be considered as a judgment in favor of the United States as plaintiff. The title of the legal plaintiff is the only one to be regarded, and the United States are only

possessed of such right as Shroder had or would have had if he had remained the owner of the judgment, and, as against him, it is not denied the lien had expired before sale.

Fourthly. As the judgment was given to Shroder to indemnify him against any loss, and he has sustained none, there is nothing due under the judgment.

Fifthly. By the law of Pennsylvania the judgment index is the proper record to be examined. That did not give the name of the United States, but merely that of Shroder, and therefore junior incumbrancers ought not to be prejudiced by this conceded or secret claim.

The committee can readily understand what would be the course of argument in reply to the legal propositions of the memorialists. They are questions of law which the committee do not feel called upon to decide, for if the application is to be favored for legal and technical reasons, the courts of law are the appropriate tribunals for such purposes. But the committee understand the memorialists to suggest these legal views not as reasons in themselves for the action of Congress, but as auxiliary to the more meritorious reasons upon which relief is asked.

In view of all the facts of the case, that forfeitures are seldom exacted, but are almost always relieved against by courts of equity; that the government has indicated its justice in the severe punishment of the offender; that the object for which the judgment was given has been attained; that no liability has been enforced against the original holder; that the lien of an ordinary creditor would certainly have been lost by lapse of time before the sale of the property; that the creditors here asking relief are *bona fide* creditors for necessary and meritorious debts, and that there is no other property of the defendant from which they can be paid, your committee recommend that the prayer of the memorialists be granted, and they accordingly report a bill for their relief.